

1992

City of Roy, Utah v. Melvin Murphy : Brief of Appellant

Utah Court of Appeals

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Cris Davis; Attorney for Plaintiff/Appellant.

Robert Macri; Attorney for Defendant/Appellant.

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UTAH COURT OF APPEALS
BRIEF

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DOCKET NO.

920088

IN THE UTAH COURT OF APPEALS

CITY OF ROY, UTAH,

Plaintiff/Appellee,

vs.

MELVIN MURPHY,

Defendant/Appellant.

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Priority No. 2

Case No. 920088CA

BRIEF OF APPELLANT

APPEAL FROM CONVICTION BY JURY OF
GUILTY DATED JANUARY 14, 1992, ROY
CIRCUIT COURT, HONORABLE JUDGE
DUTSON PRESIDING

ROBERT MACRI #2043
211 East 300 South #209
Salt Lake City, Utah 84111
Telephone: 364-3018
Attorney for Defendant/Appellant

CRIS DAVIS, Esq.
5051 South 1900 West
Roy, Utah 84067
Attorney for Plaintiff/Appellee

FILED

1992

COURT OF APPEALS

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CITY OF ROY, UTAH,

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vs.

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211 East 300 South #209
Salt Lake City, Utah 84111
Telephone: 364-3018
Attorney for Defendant/Appellant

CRIS DAVIS, Esq.
5051 South 1900 West
Roy, Utah 84067
Attorney for Plaintiff/Appellee

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
JURISDICTION AND NATURE OF PROCEEDINGS	1
STATEMENT OF ISSUES	1
CONSTITUTIONAL AND STATUTORY PROVISIONS	2
STATEMENT OF THE CASE	3
ARGUMENT	6
STATEMENT OF RELIEF SOUGHT	6
CERTIFICATE OF SERVICE	7

TABLE OF AUTHORITIES

CASES CITED

	Page
<u>Harris v. Utah Transit Authority</u> , 671 P.2d 217 (Utah 1983)...	6
<u>Miranda v. State of Arizona</u> , 384 U.S. 436 86 S.Ct. 1602, 16 L.Ed.2d 694 1966.....	4, 5
<u>Mountain Fuel Supply Co. v. Salt Lake City Corporation</u> , 752 P.2d 884 (Utah 1982)	2
<u>Ron Case Roofing and Asphalt Paving Co. v. Blomquist</u> , 773 P.2d 1382 (Utah 1989).....	2

CONSTITUTIONAL PROVISIONS

STATUTES

Utah Code Annotated 78-24-8 Privileged Communications	1, 2
Utah Code Annotated 26-25-1 Confidential Information Release <u>et. seq.</u>	1, 2
Utah Code Annotated 78-21-3	1
Utah Code Annotated 78-2a-3(d)	1
Rule 403 of the Rules of Evidence in Utah	5

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BRIEF OF APPELLANT

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JANUARY 14, 1992, ROY CIRCUIT COURT,
HONORABLE JUDGE DUTSON PRESIDING

JURISDICTION AND NATURE OF PROCEEDINGS

Court empowered by 78-21-3 Court of Appeals Jurisdiction;
specifically, 78-2a-3(d) Utah Code Annotated.

STATEMENT OF ISSUES

In this case there is only one issue. It can be approached in different manners. Specifically however, at the trial of Defendant a weak case was bolstered by allowing medical testimony of Eric Froerer. Mr. Froerer is a fire fighter and paramedic employed by Roy City, Plaintiff.

In his capacity Mr. Froerer took confidential information from Defendant Melvin Murphy regarding his physical condition while Mr. Murphy was in a custodial circumstance and badly injured in a motor vehicle accident. At no time was Defendant told that this information which was elicited from him would be used in a criminal trial. It was admitted against strenuous objection, which objection is page 4, 5 and 6 of the testimony of Eric Froerer

(Record of testimony of Eric Froerer filed in this Court). The testimony was allowed by Judge Dutson. A jury convicted Mr. Murphy of DUI on January 14, 1992.

This certain prejudicial evidence was introduced, which evidence should have been excluded on three grounds, as well as its prejudicial effect. Only because this evidence was introduced was there sufficient evidence to convict Mr. Murphy since a substantially plausible alternate story* was presented to the jury and because of the improperly prejudicial statements of Eric Froerer, Appellant submits he was convicted.

Since the decision to admit the medical technician's testimony was a question of law on the issue of witnesses, it would appear that the Standard of Review for both issues relating to admissibility of the evidence would be where the appeal presents only questions of law, the Court will review trial Court's rulings for correctness and accord them no particular deference Mountain Fuel Supply Co. v. Salt Lake City Corporation, 752 P.2d 884 (Utah 1982); See also Ron Case Roofing and Asphalt Paving Co. v. Blomquist, 773 P.2d 1382 (Utah 1989).

DETERMINATIVE CONSTITUTIONAL PROVISIONS, STATUTES,
ORDINANCES AND RULES

Utah Code Annotated 78-24-8 Privileged Communications and
Utah Code Annotated 26-25-1 Confidential Information Release et. seq. Rule 403 of the Rules of Evidence in Utah.

*Mr. Murphy was a painter coming home from work and the smell of paint and paint thinner were around him in the car.

STATEMENT OF THE CASE

At issue at a crucially balanced trial was the question which was presented to the Judge and appears before this Court in the record entitled "Testimony of Eric Froerer" filed with this Court. Summarizing Mr. Froerer's testimony, he was a medical technician and paramedic fire fighter (R:8 et. seq. for job description) and hired by Roy City (R:8) and interviewed Melvin Murphy with respect to his level of consciousness after an accident occurred and assessed him on several scales and stated (R.16) "[t]hat there was a strong odor of alcohol that was coming from Mr. Murphy's breath" according to Mr. Froerer.

On page 18 of the Record, on direct examination Mr. Davis cunningly elicits from Paramedic Froerer, who was investigating Mr. Murphy in his official capacity, "that you asked him questions about his drinking" and Paramedic Froerer indicated that "he had just left a bar and that he'd had a few drinks". And although Paramedic Froerer is not offered as "an expert" (R.14-19), still Paramedic Froerer is permitted to testify against Mr. Murphy in a semi expert position to indicate that he believed the problems were alcohol, though he did not indicate alcohol at the time of the arrest (See Record at page 24:8-11) and acknowledged that the car which had the accident, a car driven by Defendant, was full of vapor and fumes from the paint supplies which Defendant used in his profession.

All the technical matters relating to the deficit which Defendant showed are without foundation of medical skills

sufficient to make such an opinion, but may have been admissible if Defendant wished to show that the abrasion to his head in the accident had disoriented him, but are not fairly submitted before a jury with no foundation, and over strenuous objections on Miranda,** type grounds where a State agent is questioning an individual under arrest by an associated state agency, by the fact that these medical records should been kept confidential as is required in the afore quoted Confidential Information Release Section of the Utah Code which holds that liability attaches unless excluded, and that health information is not to be released, and that a Defendant has the right to request that health information obtained on him should not be used against him without his permission.

Absent Paramedic Froerer's damning semi-official indictments, it is surely clear to see that Melvin Murphy may not have been convicted by a jury in this matter. The stamp of officialdom of Paramedic Froerer and his "non expert opinions" had on the jury against Defendant's presumption of innocence, surely creates a prejudice against Defendant and denies him a fair trial.

The Court in Miranda concluded "unless adequate protective devices are employed to dispel the compulsion inherent in custodial surroundings, no statement obtained from defendant can truly be the product of free choice. There was no intelligent waiver by Mr.

Murphy, the circumstances were such that he was in the control of
**the U.S. Supreme Court in Miranda v. Arizona concluded that even without resort to brutality . . . custodial interrogation exacts a heavy toll on individual liberty and trades on the weakness of individuals. Also, that even if it might not find that the Defendant's statements were involuntary in traditional terms, if the defendant is not apprised of his rights in this situation, we can be never sure the statements were a product of free choice.
384 U.S. 436 86 S.Ct. 1602 16 L.Ed.2d 694 1966.

Mr. Froerer and clearly in this case on Miranda grounds the testimony of Paramedic Froerer should not have been permitted. Rule 403 of the Rules of Evidence in Utah declare that although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. . . . Clearly in this case, this testimony was ultimately prejudicial to Appellant.

As stated above, Defendant had the right by three (3) separate methods of demanding that the objectionable testimony of Paramedic Froerer be kept out of consideration of the jury. Despite these objections Paramedic Froerer's testimony was admitted and his "non expert" opinion relating to Defendant was put before the jury.

Specifically, (1) Defendant had the right to protect his medical records, (2) to invoke the medical privilege, and (3) the right to exclude his civil statements to a state agent while in custody. Regarding custodial interrogation, See Record at page 13 where Paramedic Froerer says he was taking responsibility for Defendant; specifically, line 21, "my main concern was getting him out of the cold and into the ambulance, where I can do a full assessment, 'cause, you know, the conditions of that car, it was smashed into a truck, he's in a bad position, he's in a compact position,

And continuing on page 15 of the Record, where Roy City Paramedic Froerer says "as soon as I found out he was conscious and breathing, I went with my equipment into the ambulance, ready to set up, came back, helped them with a back board and the

extrication equipment to get him into the ambulance. So we could further assess him". (R.15:2-6).

Defendant asserts his medical privilege on page 16 of the Record.

Appellant maintains this is an abuse of discretion.

Appellant also believes this error constitutes grounds for reversal because there is a reasonable likelihood that a more favorable result would have been obtained by Mr. Murphy in the absence of this error. See Harris v. Utah Transit Authority, 671 P.2d 217 (Utah 1983).

The error was not a harmless one and requires reversal and a new trial with the paramedic's testimony excluded.

ARGUMENT

This case raises a question of whether or not a city employee can give medical statements given while a citizen is in custody in a criminal proceeding, against the wishes of Defendant who is being tried in a criminal matter relating thereto. It seems clear to Defendant that the power of a public official speaking at a public trial on his opinion cannot be overestimated. This is why Defendant strenuously objected to Roy City Paramedic Froerer's testimony and why the Roy City Prosecutor thought it was essential.

STATEMENT OF RELIEF SOUGHT

Defendant requests a new trial in this matter with the testimony of Roy City Paramedic Froerer excluded on the grounds

herein above urged.

DATED this 23 day of November, 1992.

Robert Macri

ROBERT MACRI
Attorney for Appellant

CERTIFICATE OF MAILING

I certify I mailed four copies of the foregoing to:

CRIS DAVIS, Esq.
Roy City Prosecutor
5051 South 1900 West
Roy, Utah 84067

on this 23 day of November, 1992.

Robert M.

Addendum

78-21-3. Court to decide questions of law.

All questions of law, including the admissibility of evidence, the facts preliminary to such admission, the construction of statutes and other writings, and the application of the rules of evidence are to be decided by the court and all discussions of law addressed to the jury. Whenever the knowledge of the court is by law made evidence of a fact, the court is to declare such knowledge to the jury, who are bound to accept it.

Rule 403. Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time.

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

78-24-8. Privileged communications.

There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate. Therefore, a person cannot be examined as a witness in the following cases:

- (1) (a) Neither a wife nor a husband may either during the marriage or afterwards be, without the consent of the other, examined as to any communication made by one to the other during the marriage.

(b) This exception does not apply:

- (i) to a civil action or proceeding by one spouse against the other;
- (ii) to a criminal action or proceeding for a crime committed by one spouse against the other;
- (iii) to the crime of deserting or neglecting to support a spouse or child;
- (iv) to any civil or criminal proceeding for abuse or neglect committed against the child of either spouse; or
- (v) if otherwise specifically provided by law.

(2) An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him or his advice given regarding the communication in the course of his professional employment. An attorney's secretary, stenographer, or clerk cannot be examined, without the consent of his employer, concerning any fact, the knowledge of which has been acquired in his capacity as an employee.

(3) A clergyman or priest cannot, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs.

(4) A physician or surgeon cannot, without the consent of his patient, be examined in a civil action as to any information acquired in attending the patient which was necessary to enable him to prescribe or act for the patient. However, this privilege shall be deemed to be waived by the patient in an action in which the patient places

his medical condition at issue as an element of his claim or defense. Under those circumstances, a physician or surgeon who has prescribed for or treated that patient for the medical condition at issue may provide information in interviews, reports, records, statements, memoranda, or other data relating to the patient's medical condition and treatment which is placed at issue.

(5) A public officer cannot be examined as to communications made to him in official confidence when the public interests would suffer from the disclosure.

(6) A sexual assault counselor as defined in Section 78-3c-3 cannot, without the consent of the victim, be examined in a civil or criminal proceeding as to any confidential communication as defined in Section 78-3c-3 made by the victim.

Any health care provider who intentionally or knowingly violates any provision of Section 26-23a-2 is guilty of a class B misdemeanor. 1988

CHAPTER 24

LOCAL HEALTH DEPARTMENT ACT

(Renumbered by Laws 1990, ch. 186, §§ 889 to 913.)

26-24-1 to 26-24-24. Renumbered as §§ 17A-3-501 to 17A-3-525.

CHAPTER 25

CONFIDENTIAL INFORMATION RELEASE

- Section
- 26-25-1. Authority to provide data on treatment and condition of persons to designated agencies — Immunity from liability.
- 26-25-2. Restrictions on use of data.
- 26-25-3. Information considered privileged communications.
- 26-25-4. Information held in confidence — Protection of identities.
- 26-25-5. Violation of chapter a misdemeanor — Civil liability.
- 26-25-6. Confidentiality requirements regarding communicable or reportable diseases.

26-25-1. Authority to provide data on treatment and condition of persons to designated agencies — Immunity from liability.

(1) Any person, health facility, or other organization may, without incurring liability, provide the following information to the persons and entities described in Subsection (2):

(a) information, including information required for the medical and health section of birth certificates, as determined by the state registrar of vital records appointed under Chapter 2;

(b) interviews;

(c) reports;

(d) statements;

(e) memoranda; and

(f) other data relating to the condition and treatment of any person.

(2) The information described in Subsection (1) may be provided to:

(a) the department;

(b) the Division of Mental Health within the Department of Human Services;

(c) scientific and health care research organizations affiliated with institutions of higher education;

(d) the Utah State Medical Association or any of its allied medical societies;

(e) peer review committees;

(f) professional review organizations;

(g) professional societies and associations; and

(h) any health facility's in-house staff committee for the uses described in Subsection (3).

(3) The information described in Subsection (1) may be provided for the following purposes:

(a) study, with the purpose of reducing morbidity or mortality; or

(b) the evaluation and improvement of hospital and health care rendered by hospitals, health facilities, or health care providers.

(4) Any person may, without incurring liability, provide information, interviews, reports, statements,

memoranda, or other information relating to the ethical conduct of any health care provider to peer review committees, professional societies and associations, or any in-hospital staff committee to be used for purposes of intraprofessional society or association discipline.

(5) No liability may arise against any person or organization as a result of:

(a) providing information or material authorized in this section;

(b) releasing or publishing findings and conclusions of groups referred to in this section to advance health research and health education; or

(c) releasing or publishing a summary of these studies in accordance with this chapter.

(6) As used in this chapter:

(a) "health care provider" has the meaning set forth in Subsection 78-14-3(9); and

(b) "health care facility" has the meaning set forth in Section 26-21-2. 1990

26-25-2. Restrictions on use of data.

The department, the Division of Mental Health within the Department of Human Services, scientific and health care research organizations affiliated with institutions of higher education, the Utah State Medical Association or any of its allied medical societies, peer review committees, professional review organizations, professional societies and associations, or any health facility's in-house staff committee may only use or publish the material received or gathered under Section 26-25-1 for the purpose of advancing medical research or medical education in the interest of reducing morbidity or mortality, except that a summary of studies conducted in accordance with Section 26-25-1 may be released by those groups for general publication. 1990

26-25-3. Information considered privileged communications.

All information, including information required for the medical and health section of birth certificates as determined by the state registrar of vital records appointed under Chapter 2, interviews, reports, statements, memoranda, or other data furnished by reason of this chapter, and any findings or conclusions resulting from those studies are privileged communications and may not be used or received in evidence in any legal proceeding of any kind or character. 1989

26-25-4. Information held in confidence — Protection of identities.

All information, including information required for the medical and health section of birth certificates as determined by the state registrar of vital records appointed under Chapter 2, interviews, reports, statements, memoranda, or other data so provided shall be held in strict confidence by the person or organization to which it is provided, and any use, release, or publication resulting therefrom shall be made so as to preclude identification of any person or persons studied. 1989

26-25-5. Violation of chapter a misdemeanor — Civil liability.

(1) Any use, release or publication, negligent or otherwise, contrary to the provisions of this chapter shall be a class B misdemeanor.

(2) Subsection (1) shall not relieve the person or organization responsible for such use, release, or publication from civil liability. 1991

INSTRUCTION NO. _____

All presumptions of law, independent of evidence, are in favor of innocence, and a defendant is presumed innocent until he is proved guilty beyond a reasonable doubt. In case of a reasonable doubt as to whether his guilt is satisfactorily shown, the defendant is entitled to a not guilty verdict.'

I have heretofore told you that the burden is upon the State to prove the defendant guilty beyond a reasonable doubt. Proof beyond a reasonable doubt does not require proof to an absolute certainty. By reasonable doubt is meant a doubt that is based on reason and one which is reasonable in view of all the evidence. It must be a reasonable doubt and not a doubt which is merely fanciful or imaginary or based on a wholly speculative possibility. Proof beyond a reasonable doubt is that degree of proof which satisfies the mind and convinces the understanding of those who are bound to act conscientiously upon it and obviates all reasonable doubt. A reasonable doubt is a doubt which reasonable men and women would entertain, and it must arise from the evidence or the lack of the evidence in this case.

Def's proposed instruction
Not given - RSD
(157)

INSTRUCTION NO. _____

You are the exclusive judges of the credibility of the witnesses and the weight of the evidence. In judging the credibility of the witnesses and the weight of their testimony, you can take into consideration their bias, if any is shown, their interest, if any, in the result of the lawsuit either as parties or otherwise, or any probable motive or lack thereof to testify as they do, if any is shown. You may consider whether any witness contradicted himself or herself, the witnesses' deportment upon the witness stand, the reasonableness or lack thereof of their statements, their apparent frankness or candor or the want of it, their opportunity to know, their ability to understand, their capacity to remember and any other fact or circumstance which you believe may have a bearing on the truthfulness or accuracy of the statements of witnesses. You may consider any or all of these factors and determine therefrom, in accordance with your honest convictions, what weight and credibility you should give to the testimony of each witness, measured by reason and common sense and the rules set forth in these instructions.

The testimony of a witness known to have made false statements on one matter may thus be less convincing on other matters. So if you believe a witness has willfully testified falsely as to any material fact in this case, you may disregard the whole of the testimony of such witness, or you may give it

(13)
Def. proposed instruction
R. 11

INSTRUCTION NO. _____

Page Two

such weight as you think it is entitled to. Discrepancies in a witnesses' testimony or between the testimony of different witnesses, if any, do not in themselves necessitate the discrediting of testimony. Innocent failure of recollection or misrecollection might occur. Furthermore, two witnesses to the same event might perceive the event differently.

*Def. proposed instruction
Not given - RSH.*

SECOND CIRCUIT COURT, STATE OF UTAH

WEBER COUNTY, ROY DEPARTMENT

Y OF ROY

Plaintiff

CRIMINAL JURY INSTRUCTIONS
CASE NO: 912001982 TC

VIN MURPHY

Defendant

ROLE OF THE JURY

A. INSTRUCTING THE JURY about the law which applies to this case is one of my duties as judge. At various times during the trial I will read to you certain instructions which explain your duties as jurors and the principles of law which will guide your decision. A written copy of these instructions will be given to you to use in the jury room. You have a duty to follow these instructions.

B. THE INSTRUCTIONS should be CONSIDERED AS A WHOLE. Just because certain instructions are given first, or last, doesn't mean they deserve any more attention than any other instruction. Do not single out any part and ignore the rest. Consider them as equally important.

C. QUESTIONS OF FACT are for the jury to decide. The main question that will decide is whether the defendant is guilty of the charges in the information. In making this decision, do not be influenced by your emotions. Whether you like or dislike the defendant should not affect your verdict. The fact that the defendant may have been arrested or summoned, or charged in any information, or brought to trial should not be considered by you as any indication of guilt. The defendant is presumed to be innocent.

D. RECESSES will be called from time to time during the trial. During recess do not talk about this case among yourselves, or with anyone else. Do not form or express an opinion until the case is submitted to you for decision. Keep an open mind until you have heard both sides.

GIVEN 5/1
NOT GIVEN

STATEMENTS BY JUDGE AND ATTORNEYS

A. OPENING STATEMENTS may be made by counsel on both sides to give you a review of what they expect their witnesses to say. Counsel will also make closing arguments at the end of the trial. These statements and arguments by counsel are not evidence. Their purpose is to help you understand and analyze the evidence.

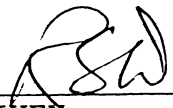
B. A STIPULATION is an agreement by both attorneys that certain things are true. You should regard any stipulated facts as having been conclusively established.

C. OBJECTIONS may be made to particular questions which will be asked during the trial, if the objecting attorney believes that an answer would not be admissible evidence. There are rules to determine what evidence is competent for the jury to consider. These rules are enforced by the court after an objection is made. If an objection is overruled, that means the evidence can come in, and it may be considered by you. If an objection is sustained, the evidence is kept out. Do not speculate about the reasons for objections, or about the court rules one way or the other.

D. THE PERSONAL OPINIONS of myself as judge, or of the attorneys in this case are immaterial. We are officers of the court. It would not be fair for any of us to express or to imply any personal opinion as to guilt or innocence, or any other issue in the case. If any of my statements or rulings seem to indicate my opinion on any fact, this is not intended and you should disregard it.

E. THE EVIDENCE in this case will consist of testimony by witnesses under oath, exhibits admitted by the court, and stipulations of counsel. You are the exclusive judges of the facts, but you must determine the facts from the evidence produced here in court. You should act conscientiously and fairly in weighing this evidence to reach a just verdict, regardless of what the consequences of such a verdict may be.

GIVEN _____
NOT GIVEN _____



PRESUMPTION OF INNOCENCE, BURDEN OF PROOF, REASONABLE DOUBT

A. A DEFENDANT IS PRESUMED INNOCENT until each element of the offense charge is proven beyond a reasonable doubt. If you have a reasonable doubt of the defendant's guilt, your findings must be "not guilty".

B. THE PROSECUTION HAS THE BURDEN OF PROVING the defendant guilty beyond a reasonable doubt. The presumption of innocence follows the defendant through the trial until the prosecution has met this burden.

C. A REASONABLE DOUBT is a doubt based on reason. It is substantial doubt which remains after reviewing all the evidence. It may be created by the evidence, or it may arise from the lack of evidence. Beyond a reasonable doubt does not mean beyond all possible doubt, or beyond any possibility of error.

D. YOU HAVE A REASONABLE DOUBT, if you can honestly say you are not satisfied of the defendant's guilt, after reviewing all the evidence.

E. YOU DO NOT HAVE A REASONABLE DOUBT if you can honestly say you are fully convinced of the defendant's guilt, after reviewing all the evidence, that you have no real questions of his/her guilt.

F. IF TWO INTERPRETATIONS can be made from the evidence in this case, if one of these interpretations points to guilt and the other to innocence of the defendant, it is your duty to adopt the interpretation pointing to innocence. This rule applies only when both interpretations are reasonable.

GIVEN 130
NOT GIVEN _____

DELIBERATIONS

A. WHEN YOU GO TO THE JURY ROOM to discuss this case and arrive at a verdict, the first thing you should do is choose a member of the jury to act as foreperson. The foreperson will preside over your discussions and will announce the verdict to which you must all agree. Since this is a criminal case, the verdict must be unanimous, must be in writing, and must be brought back to court.

B. YOUR VERDICT must express the individual opinion of each juror. Once you have made up your mind whether the defendant is guilty or innocent, don't change it just because other jurors may disagree with you. Talk to your fellow jurors and consider their views. If you are persuaded your first conclusion was wrong, don't hesitate to change it. Remember your duty as a juror is to help each other in arriving at the truth.

C. YOU WILL BE GIVEN forms of verdict to use in this case. Your foreperson will sign the verdict which correctly sets forth your decision.

ONLY THE FOREPERSON HAS TO SIGN THE VERDICT. When you have agreed on a verdict, tell the bailiff you are ready to return to court.

GIVEN RSD
NOT GIVEN _____

WITNESSES

A. THE CREDIBILITY OF A WITNESS means deciding whether the witness is worthy of belief. In analyzing credibility, it may be helpful to ask yourself these questions:

What impression is made by the witness' appearance and manner of testifying?

Has the witness made conflicting statements, or given testimony which is contrary to other evidence?

Is the witness shown to be biased for or against one of the parties, or does the witness have a personal interest in how this case is decided?

Did the witness have a good opportunity to know the facts in the first place, and the ability to remember them at this time?

Is the witness' story reasonable in light of human experience?

Using these guidelines, you should determine the credibility, and what weight you should give to the testimony of each witness.

B. CONFLICTS IN THE EVIDENCE may arise in several ways. It is common knowledge that two witnesses to the same event may tell different versions of

One may have been a better observer or may have a better memory. For personal reasons, a witness may slant his or her testimony, either consciously or unconsciously. You should try to reconcile such conflicts and decide what the true facts are.

C. IF YOU THINK A WITNESS HAS LIED about any material fact, you are free to disregard all the testimony from that witness, or give it what weight you think it deserves. You don't have to believe any witness whose testimony is not reasonable in view of all the facts.

D. THE NUMBER OF WITNESSES on each side does not, in itself, indicate which side has the stronger case. You may believe one witness against many, many witnesses against a few, depending on what you find their credibility to be.

E. THE DEFENDANT is a competent witness on his own behalf. If he chooses to testify, his testimony should be given the same consideration as is given to that of any other witness. The defendant has a constitutional right not to testify. If he chooses not to do so, you should not consider his silence as having any bearing on his guilty or innocence.

GIVEN _____
NOT GIVEN _____

BA

F THE ELEMENTS of the offense of Driving Under the Influence of
hol are as follows, which elements must be proven beyond a reasonable
ot:

That the defendant was driving, or in actual physical control,
of a motor vehicle on November 2, 1991; at or near 5600 South
Frontage Road, Roy City, Weber County, Utah, while under the
influence of alcohol.

GIVEN BA
NOT GIVEN _____

G. ONE IS UNDER THE INFLUENCE OF ALCOHOL within the meaning of the law
n it has so far affected his brain and nervous system to impair to an
reciable degree his abilities of perception, coordination, or of will or
gment, so that he is unable to operate his automobile with the degree of
e which an ordinary person in the possession of his faculties would
rcise under similar circumstances.

GIVEN BSA
NOT GIVEN _____

Instruction No.

You are instructed that the fact a person refuses to take a blood or breath test is no evidence of his guilt or innocence regarding the charge of DUI but is merely a fact that you may consider along with all other evidence with respect to the weight and credibility you give it.

THE DEFENDANT IS CHARGED with the offense of Driving Under the
Influence of Alcohol/Drugs, in violation of Ch. 41-6-44 of the Roy City
Municipal Code, on November 2, 1991.

GIVEN RSB
NOT GIVEN _____

RECEIVED

MAR 23 1992

SECOND CIRCUIT COURT - ROY
WEBER COUNTY, STATE OF UTAH

CIRCUIT COURT
ROY CITY DEPARTMENT

CITY OF ROY CITY
VS

JUDGMENT, SENTENCE
(COMMITMENT)

MURPHY, MELVIN
4189 SOUTH 300 WEST
#62
OGDEN UT

CASE NO: 912001982
DOB: 10/28/57
TAPE: 3R775 COUNT: 0691
DATE: 01/14/92

THE ABOVE NAMED DEFENDANT BEING ADJUDICATED GUILTY FOR THE
OFFENSE(S) AS FOLLOWS:

Charge: 41-6-44 DRIVING UNDER THE INFLUENCE OF ALC/DRUGS

Plea: Not Guilty Find: Guilty - Jury

Fine: 1000.00 Susp: 300.00

Jail: 90 DA Susp: 88 DA ACS: 60 HR

FEES AND ASSESSMENTS:

Fine Description: Fine- Prosecutor Spl

Credit: 0.00 Paid: 0.00 Due: 378.38

Fine Description: Surcharge - 85%

Credit: 0.00 Paid: 0.00 Due: 321.62

TOTAL FINES AND ASSESSMENTS:

Credit: 0.00 Paid: 0.00 Due: 700.00

TRACKING:

Appeal

08/10/92

DOCKET INFORMATION:

Sentence:

TAPE: 3R775 COUNT: 0691

Chrg: DUI Plea: Not Guilty Find: Guilty - Jury

Fine Amount: 1000.00 Suspended: 300.00

Jail: 90 DAYS Suspended: 88 DAYS

Community Service: 60 HOURS

Fines and assessments entered: FN 378.38

SB 321.62

Total fines and assessments...: 700.00

Conditions of Probation: 18 months informal Court Probation

JAIL/FINE SUSP UPON PYMT OF FINE AND COMPLIANCE W/ALL ORDERS.


1) ENROLL IN/COMPLETE ALC COUNSELING PROG THROUGH ROCKY MTN CON-
SULTANTS AND PAY ALL COSTS REQUIRED 2) PERFORM 60 HRS OF COM
SER THROUGH ROCKY MTN CONSULTANTS 3) CONSUME NO ALC/DRG 4) VI-
OLATE NO LAW EXCEPT MINOR TRAFFIC IF LEGAL TO DRIVE 5) ATTEND
MIN OF 1 A/A PER WEEK (NOTE: COURT IS NOT ASKING FOR MONTHLY
PROOF, BUT WOULD LIKE IT MADE AVAILABLE WHEN REQUESTED) 6) DEF

TO REPORT TO WCJ AT 6 PM ON 1/24/92 FOR 48 HRS. DEF TO PAY \$100/MONTH COMMENCING 2/15/92. REVIEW OF FINE IS SET FOR 8/20/92 AT 1:30 PM, BUT IF DEF CANNOT MAKE PYMTS HE NEEDS TO CONTACT CLERKS OFFICE ASAP TO MAKE OTHER ARRANGMENTS. DEF'S CONVICTION IS ENTERED.

CALENDAR:

REV FINE scheduled for 8/20/92 at 1:30 P in room 1 with RSD

BY THE COURT



JUDGE, CIRCUIT COURT

NOTE: APPEAL MUST BE FILED WITHIN 30 days
OF ENTRY OF THIS JUDGMENT.